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April 2, 2008

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: **Personnel Security Hearing**

Date of Filing: **October 30, 2007**

Case Number: **TSO-0564**

This Decision considers the eligibility of XXXXXXX XXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As explained below, it is my decision that the individual's access authorization should be restored.

I. *BACKGROUND*

The individual is an employee of a Department of Energy (DOE) contractor. In 2006, his access authorization was restored based on the finding of a DOE Hearing Officer that the individual was successfully treating his Bipolar I Disorder with medication, and that he was committed to taking the necessary actions to maintain his stability and avoid future bi-polar episodes. *Personnel Security Hearing*, 29 DOE ¶ 82,943 (2006). On February 28, 2007, the individual displayed delusional thinking in the workplace. He subsequently was hospitalized for psychiatric care from March 3 until March 8, 2007. The DOE conducted a personnel security interview with the individual in April 2007 (the 2007 PSI). In June 2007, a DOE-consultant Psychologist conducted a psychiatric evaluation of the individual. The DOE-consultant Psychologist issued a psychiatric evaluation report on July 5, 2007.

In October 2007, the Manager for Personnel Security of the DOE area office where the individual is employed (the Manager) issued a Notification Letter to the individual. The Notification Letter states that the individual's conduct has raised a security concern under Section 710.8(h) (Criterion H) of the regulations governing

eligibility for access to classified material. With respect to Criterion H, the Notification Letter finds that the individual has an illness or mental condition of a nature which, in the opinion of a licensed clinical psychologist, causes or may cause, a significant defect in his judgment or reliability. Specifically, the Operations Office finds that

> **1. In June 2007, the DOE-consultant Psychologist evaluated the individual and diagnosed him as suffering from Bipolar I Disorder, Most Recent Episode Manic, in Full Remission (no manic symptoms for two months). The DOE-consultant Psychologist concluded that this is an illness that causes, or may cause, a significant defect in the individual's judgment or reliability.**
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> **2. On March 3, 2007, the individual was taken to a hospital emergency room by the police after having delusional thoughts involving the Central Intelligence Agency, and going to a neighbor's house to seek help. He was hospitalized until March 8, 2007.**
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> **3. On February 28, 2007, the individual was administratively restricted by his DOE contractor employer from work requiring a security clearance at the recommendation of the employer's Staff Clinical Psychologist (the Staff Clinical Psychologist).**
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> **4. Despite stating at his September 2005 psychological evaluation that he recognized the need to comply with taking his prescribed psychiatric medication to reduce the risk of a future bipolar episode, the individual began reducing this medication in December 2006, after he asked his doctor if he would work with him to go off his medication. The individual completely discontinued taking his prescribed medication in February 2007.**

***See* Enclosure 1 to October 2007 Notification Letter. 1/**

1/ **Enclosure 1 also refers to concerns regarding the individual's mental and emotional condition and his reluctance to take prescribed medication before and during an involuntary March 1997 hospitalization, when he was initially diagnosed with Bipolar Disorder I. In addition, it refers to subsequent diagnoses of Major Depression, Severe and Bipolar Disorder I in 2000, and**

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The individual requested a hearing to respond to the security concerns raised in the Notification Letter. In his response to the Notification Letter and in subsequent filings, the individual stated that he no longer has any doubt that he suffers from Bipolar I Disorder and that he requires medication to maintain his mental stability. Accordingly, the testimony at the hearing focused on the individual's actions leading to his February/March 2007 bipolar episode, and his efforts to mitigate the concerns raised by that episode.

II. *HEARING TESTIMONY*

At the hearing, testimony was received from seven persons. The DOE presented the testimony of the DOE-consultant Psychologist. The individual testified and presented the testimony of his psychiatrist, the Staff Clinical Psychologist, his mother, his mother's boyfriend, his girlfriend, and his supervisor.

A. *The DOE-consultant Psychologist*

The DOE-consultant Psychologist testified that the individual has been diagnosed with Bipolar I Disorder since 1992. TR at 13. He stated that from his review of the 2006 security clearance hearing transcript, the individual agreed at the hearing to a monitoring program that included his psychiatrist and the Staff Clinical Psychologist. TR at 14-15. He testified that the individual's agreement for monitored treatment was a pivotal factor in mitigating the DOE's concerns that he could avoid a future psychotic episode. TR at 22. The DOE-consultant Psychologist stated that despite this agreement, the individual had few meetings with the Staff Clinical Psychologist after the hearing, and the individual did not inform the Staff Clinical Psychologist in December 2006, when at the individual's urging, his psychiatrist agreed to reduce and eliminate his medication. TR at 15.

The DOE-consultant Psychologist stated that the individual's failure to comply with the treatment procedures agreed to at the 2006 hearing raised a concern, because bipolar disorder is a condition frequently associated with treatment compliance issues. TR at 23. He stated that while bipolar disorder is a relapsing, recurring type

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diagnoses of Bipolar Disorder I in 2003 and 2005.

of condition, about two thirds of people with adequate treatment and compliance have good outcomes. TR at 24, DOE Exhibit 28. However, the DOE-consultant Psychologist testified that people with bipolar disorder typically struggle to accept their diagnosis and the need for medication, and that this inability to accept the need for medication is the chief cause for their relapses. TR at 25-26.

The DOE-consultant Psychologist stated that when the individual experienced a bipolar episode after his psychiatrist permitted him to eliminate his medication, the individual became convinced that his Bipolar I Disorder diagnosis is correct and that he requires medication. However, the DOE-consultant Psychologist cautioned that, given the individual's history of doubt about his diagnosis, the DOE should take time to test his commitment to maintaining his treatment and medication regimen. He stated that the individual needs to demonstrate that he has been stable since his February/March 2007 episode, that he receives regular care from his psychiatrist, that he is maintaining a healthy lifestyle, and that he is apprising the Staff Clinical Psychologist concerning his treatment. TR at 27-28.

B. *The Individual*

The individual testified that he lives alone in his own home. He stated that when he and his attorney received the Hearing Officer's 2006 decision, they discussed it and agreed that it did not require the individual's psychiatrist to make reports to the Staff Clinical Psychologist about the individual's treatment. TR at 136-137. He therefore told these doctors that it was not necessary to make these reports. TR at 154.

The individual testified that until his 2007 episode, he had always harbored doubts about his diagnosis and was concerned that he was medicating himself for no reason. He stated that he shared these doubts and concerns with his mother and her boyfriend, and with his girlfriend. He stated that they supported his decision to ask his psychiatrist to reduce and then eliminate his medication in December 2006 and January 2007. TR at 138-139.

The individual stated that during the late February/early March 2007 psychotic episode, he became delusional, but that he still was able to willingly accept medical advice to consult his psychiatrist, resume his medication, and to go to the hospital. TR at 142-144. He testified that he does not regret having the episode, because it had the effect of settling the issue of his bipolar condition and his need for medication. He stated that he now has a sense of

clarity concerning his diagnosis, and is at peace with it. TR at 145. He stated that the psychotic episode was a traumatic experience that he does not wish to repeat. TR at 146

He stated that he is committed to working with his psychiatrist and the Staff Clinical Psychologist in the ongoing treatment of his condition and to maintaining a stable lifestyle. He testified that his girlfriend, his pastor, his mother and her boyfriend constitute a support system of people who are aware of his condition and need for medication. TR at 146-147. He stated that he leads a normal, lifestyle with a consistent pattern of activity. TR at 158-159.

The individual stated that he was willing to commit to a monitoring program that would include regular communications between the individual, his psychiatrist, and the Staff Clinical Psychologist.

C. *The Individual's Psychiatrist*

The individual's psychiatrist testified that he has treated the individual for several years for a Bipolar I Disorder and that the individual has been "reluctant but willing" to take lithium as a prescribed treatment. TR at 63-64. He stated that the individual had questions about the validity of his diagnosis and the need for ongoing medication, and that these questions were discussed by medical experts at his 2006 security clearance hearing. TR at 64-65. The individual's psychiatrist testified that following this hearing, the individual expressed an interest to him in eliminating his lithium to see if it actually was necessary to prevent a bipolar episode, and that the psychiatrist agreed to oversee a gradual reduction in this medication. TR at 65. He stated that the individual's last dose of lithium was on February 13, 2007. TR at 71. He stated that he saw the individual on March 1, 2007, the day after the Staff Clinical Psychologist removed him from security-related work based on his demeanor. He observed that although the individual was not manic, his thinking was getting delusional, so he placed the individual back on lithium. However, he stated that the individual did not immediately benefit from the lithium, and required hospitalization when his delusional symptoms worsened. TR at 66-67. He stated that the episode rated about a 3.5 for seriousness on a 5 point scale. When he next saw the individual on March 12, 2007, the individual's lithium had taken effect and the individual was completely recovered from his delusional thinking. 72-73.

The individual's psychiatrist stated that following the 2006 security hearing, he recalled being informed by the individual's

attorney that he needed to notify the Staff Clinical Psychologist concerning any changes in the individual's condition or in his medication. However, shortly thereafter, he was notified by the individual's attorney or the individual that such notification was not required. 68, 76-77, 88.

The individual's psychiatrist testified that he and the individual have discussed his diagnosis several times since the episode, and the individual is clear in his mind that he has a bipolar disorder that requires indefinite treatment, and that he is comfortable about needing medication. TR at 67-68. He stated that he has seen the individual periodically since March 2007, and that the individual is calm and logical in his demeanor, and neatly dressed and groomed. TR at 82. The individual's psychiatrist testified that the individual is maintaining a therapeutic level of lithium, and that he will continue to treat the individual indefinitely due to the need to periodically monitor these lithium levels. TR at 79. He stated that he believes that the individual's February/March 2007 psychotic episode was a very unpleasant experience for him, and that it has served to eliminate his doubts about his need for medication. TR at 80, 84.

D. *The Staff Clinical Psychologist*

The Staff Clinical Psychologist stated that he has known the individual since March 2003, and that the individual always has been honest in discussing his feelings about his medical diagnosis and treatment. TR at 105-106, 123, 167.

He stated that the individual did not inform him when the individual and his psychiatrist agreed to eliminate the individual's medication as an experiment, and that he would have recommended against it. However, he testified that the individual's lack of notice did not violate any regulation or directive of the individual's employer. The Staff Clinical Psychologist also stated that the individual handled this experiment in an appropriate way, by engaging his physician and working a plan. TR at 114, 126. 2/ He testified

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2/ He testified that following the 2006 security clearance hearing, he had expected that a requirement would be included in the Hearing Officer's decision that the individual's psychiatrist would make reports to him concerning the individual's treatment and medication. However, he was informed by either the individual or his attorney that no such requirement was contained in the

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that there was plenty of rational basis for the individual's doubt concerning his Bipolar I diagnosis because the individual's medical history did not show clear evidence of a prior psychotic episode. TR at 108. He stated that the individual's decision to gradually eliminate his medication under his psychiatrist's direction was unfortunate, but that it was not irrational, was not symptomatic of a mental illness, and did not indicate poor judgment or unreliability. TR at 114-115.

The Staff Clinical Psychologist stated that he agreed with the individual's psychiatrist that the individual's February/March 2007 bipolar episode was about 3.5 out of 5 in its degree of severity, with no homicidal or suicidal components. TR at 108. He stated that on February 28, 2007, when the individual began to display symptoms of delusional thinking, he directed the individual to leave work and see his psychiatrist, and that the individual complied with his request. TR at 132.

The Staff Clinical Psychologist testified that the individual is fully rehabilitated from his 2007 episode and that his prognosis is very good on lithium, with little or no risk of a future episode. TR at 117-118. He stated that as a result of the episode, the individual now has no doubt about his diagnosis and his need to use medication. TR at 105, 116. The Staff Clinical Psychologist concluded that he has no concern that the individual will fail to comply with his treatment regimen. TR at 136.

E. *The Individual's Mother and Her Boyfriend*

The individual's mother testified that she knew that the individual had decided to reduce and eliminate his medication in December 2006 and early 2007. She stated that she and the individual's sister had doubts about his diagnosis of Bipolar I Disorder, and approved of his decision to stop taking lithium. She stated that in February 2007, she observed nothing abnormal in her son's demeanor until just before he was hospitalized. She stated that she and her son talk on the phone once or twice a week, and see each other on Sundays. She stated that since his psychotic episode, he has been taking his medication regularly. TR at 54-58.

The individual's mother stated that she is glad that the individual's 2007 episode settled the issue of whether he needs to

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decision. TR at 113-114.

be on medication. She testified that she does not think that he will discontinue his medication in the future. TR at 59.

The individual's mother's boyfriend testified that he has been seeing the individual's mother for about three years, and that he socializes with the individual at least weekly. He stated that when the individual told them that he had arranged to go off of his medication, he and the individual's mother agreed that it was a good idea because he needed to know if the medication was really necessary. He stated that the individual asked them to watch and observe his behavior, and warn him about anything unusual. The mother's boyfriend testified that until the incident began, they observed nothing unusual. TR at 45-46.

The mother's boyfriend stated that the individual now realizes that he needs medication and is at peace with himself and his life. He testified that the individual has a variety of interests and healthy social contacts, follows a predictable schedule, and has good life skills. TR at 46-52

F. *The Individual's Girlfriend*

The individual's girlfriend testified that she met the individual in the summer of 2005. She stated that the individual was up-front about his Bipolar I diagnosis, although he told her that he questioned it. She stated that as the individual reduced in medication in December 2006/January 2007, she noticed no changes in him. She stated that she began to notice that he was behaving differently when they had dinner together on Thursday, February 28, 2007, and she helped him with his medication. She stated that she did nothing on Friday, because the individual's mother said that she would check on the individual. She stated that she spent the day with the individual on Saturday, March 1, and noticed that he was continuing to act strangely. She stated that she left him about 10 p.m., and that at 1 a.m. the individual went to a neighbor and then to the hospital. TR at 90-104.

G. *The Individual's Supervisor*

The individual's supervisor testified that she has worked with the individual on a daily basis since 2004, and he has always been a timely, very disciplined, and performs his work tasks exceptionally well. She stated that she was unaware that the individual was in the process of eliminating his medication in December 2006 and January 2007. She testified that at a meeting on Thursday, February 28, 2007, she noticed that the individual did not seem

normal. She stated that later that day, security was contacted and the individual agreed to see his psychiatrist. TR at 35-38.

The individual's supervisor testified that the individual returned to work a few days after this psychotic episode. She stated that as the result of a reorganization, she is no longer the individual's supervisor, but that she continues to see him on a daily basis. She stated that she is aware that in the ten months since his episode, the individual has worked hard to complete a difficult project, and has performed exceedingly well. TR at 39. She stated that the individual has been calm and stable since the episode, and she would have no reluctance in working with him in the future. TR at 40-43.

H. *The DOE-consultant Psychologist's Additional Testimony*

After listening to the testimony of the individual and the other witnesses, the DOE-consultant Psychologist testified that the individual's prognosis has improved since his June 2007 evaluation. TR at 169. He stated that he believes that the individual has maintained the acceptance of his Bipolar I diagnosis and his need for medication that was brought about by his February/March 2007 psychotic episode, although he cautioned that there is always some risk that a bipolar individual will begin to have doubts at a future time. In this regard, the DOE-consultant Psychologist stated that he thought that a medication monitoring agreement between the individual psychiatrist and the Staff Clinical Psychologist was a good idea. TR at 170-171. However, the DOE-consultant Psychologist testified that the individual had convinced him that he is unlikely to have a future psychotic episode because he has demonstrated that he is willing to continue with appropriate treatment and medication, that he behaves responsibly, and that he has a good support system. The DOE-consultant psychologist therefore concluded that the individual now has mitigated the concerns raised by his 2007 episode, and has shown that he does not have a condition that would be likely to affect his judgment and reliability. *Id.*

III. *APPLICABLE STANDARDS*

A DOE administrative review proceeding under this Part is not a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. In this type of case, we apply a different standard, which is designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The burden is on the individual to come forward at the hearing with evidence to convince

the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d).

This standard implies that there is a presumption against granting or restoring of a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (the "clearly consistent with the interests of national security test" for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. *Personnel Security Hearing (Case No. VSO-0002)*, 24 DOE ¶ 82,752 at 85,511 (1995).

Once a security concern has been found to exist, the individual has the burden of going forward with evidence to rebut, refute, explain, extenuate or mitigate the allegations. *Personnel Security Hearing (Case No. VSO-0005)*, 24 DOE ¶ 82,753 (1995), *aff'd*, 25 DOE ¶ 83,013 (1995). *See also* 10 C.F.R. § 710.7(c).

IV. *ANALYSIS*

In the administrative review process, it is the Hearing Officer who has the responsibility for forming an opinion as to whether an individual with a diagnosed mental condition has mitigated the security concerns arising from the diagnosis. See 10 C.F.R. § 710.27. The DOE does not have a set policy on what constitutes mitigation of concerns related to mental conditions, but instead makes a case-by-case determination based on the available evidence. Hearing Officers properly give a great deal of deference to the expert opinions of psychiatrists and other mental health professionals regarding the mitigation of concerns related to mental conditions. *See, e.g., Personnel Security Hearing (Case No. TSO-0401)*, 29 DOE ¶ 82,990 at 86,677 (2006). At the hearing, the DOE-consultant Psychologist, the individual's psychiatrist, and the Staff Clinical Psychologist all concluded that the individual had mitigated the concerns raised by his diagnosis of Bipolar I Disorder, and by the circumstances surrounding his psychotic episode in late February/early March 2007. As discussed below, I agree with the conclusions of these medical professionals.

It is clear that the manic and delusional bipolar episodes experienced by the individual in 1997 and early 2007 pose a

significant security risk to the DOE. In several Part 710 decisions, Hearing Officers have found that the risk of future, untreated Bipolar I Disorder episodes pose too great a security risk to permit the granting of an access authorization. 3/ However, I find that the individual has provided evidence of a medication regimen that has been effective in preventing the occurrence of these psychotic episodes. He also has shown a history of cooperation with medical professionals in treating his disorder, and has demonstrated that he now has developed a self-knowledge and acceptance of his condition. Finally, I find that he has medical and family support systems in place that will minimize the risk of an untreated psychotic episode occurring in the future.

Based on his testimony and demeanor at the hearing, I accept the individual's assertion that he has fully accepted his diagnosis of Bipolar I Disorder and his need for medication and ongoing medical treatment. Although the individual admits that he had doubts about his diagnosis and need for medication in the past, he contends that he has arrived at a full acceptance of these conditions after his medically supervised effort to reduce and eliminate his medication in early 2007 resulted in a psychotic episode. 4/ This acceptance was supported by the testimony of the individual's psychiatrist, the Staff Clinical Psychologist, the DOE-consultant Psychologist, and by the individual's personal witnesses.

Further, I find that the individual has demonstrated by the testimony of his psychiatrist that he has been compliant in taking

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3/ *See Personnel Security Hearing (Case No. TSO-0031)*, 28 DOE ¶ 82,950 (2003) (possibility of relapse was too great for individual with Bipolar Affective Disorder to retain her access authorization); and *Personnel Security Hearing (Case No. VSO-0358)*, 28 DOE ¶ 82,755 (2000) (possibility of relapse was too great for individual with Bipolar I Disorder to retain his access authorization).

4/ I find that the individual acted under appropriate medical supervision when he reduced and eliminated his medication beginning in December 2006. His psychiatrist testified that he sanctioned and directed the process, and the Staff Clinical Psychologist testified that the individual was under no duty to inform him of changes in medication approved by his doctor. Moreover, the individual informed his family members that he was reducing his medication and asked them to be alert to any changes in his behavior. In this regard, the individual acted responsibly.

his prescribed medication. The testimony of his girlfriend, his mother, his mother's boyfriend and his supervisor confirm that apart from the brief psychotic episode leading to his March 2007 hospitalization, the individual leads a normal, stable life and interacts in a positive way with his family, friends and co-workers. Furthermore, I am persuaded by the testimony of the individual, his girlfriend and his mother that the individual is sincerely committed to a regulated life-style which will promote the individual's good health in the future. *See Personnel Security Hearing (TSO-0189)* 29 DOE ¶ 82,820 at 85,860-61 (2005). With regard to the effective treatment of any future episodes, I find that the individual has corroborated his assertion that he consistently has acted in accordance with the guidance of his medical professionals and family members in seeking appropriate treatment, and that it is likely that he will continue to do so. The testimony of the Staff Clinical Psychologist and the individual's psychiatrist indicates that the individual followed their medical advice even when he was becoming delusional during his most recent psychotic episode.

In addition, the individual has established that his psychiatrist has agreed to monitor the individual's lithium levels and to report these findings and other pertinent medical information to the Staff Clinical Psychologist. 5/ This sharing of medical information will enhance the ability of the individual's employer to address the onset of psychotic symptoms on an emergency basis if they occur in the future. I conclude that the individual has demonstrated that his medication, lifestyle, and willingness to follow medical advice has been effective in preventing psychotic episodes, and that this is likely to continue in the future. His single psychotic episode since 1997 resulted from a medically monitored experiment with his medication, and this episode received prompt medical attention.

5/ *See* letters from the individual's psychiatrist and the Staff Clinical Psychologist dated February 28, 2008 and February 1, 2008, respectively. At the individual's 2006 security clearance hearing, a similar monitoring arrangement was agreed to by the individual and these doctors. However, the individual's counsel stated that she misinterpreted the Hearing Officer's 2006 Decision as eliminating the need for this arrangement, and advised her client that it was unnecessary. *See* TR at 165, February 15, 2008, Affidavit of Individual's Counsel. I accept this explanation and find that the individual's failure to adhere to the earlier agreement does not indicate dishonesty or unreliability.

Based on all of these considerations, I find that the individual has adequately mitigated the security concerns arising from his diagnosis of Bipolar I Disorder, and from the related actions set forth in the Notification Letter.

V. *CONCLUSION*

For the reasons set forth above, I find that the DOE properly invoked Criterion H in suspending the individual's access authorization. After considering all the relevant information, favorable or unfavorable, in a comprehensive and common-sense manner, I find that the evidence and arguments advanced by the individual convince me that he has sufficiently mitigated the security concerns accompanying that criterion. In view of Criterion H and the record before me, I find that restoring the individual's access authorization would not endanger the common defense and would be clearly consistent with the national interest. It therefore is my conclusion that the individual's access authorization should be restored. The individual may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Kent S. Woods
Hearing Officer
Office of Hearings and Appeals

Date: April 2, 2008